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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
Case No. 05-44481-rdd

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In the Matter of:

DPH HOLDINGS CORP., et al.,

Reorganized Debtors.

- - - - -x

U.S. Bankruptcy Court
300 Quarropas Street
White Plains, New York
May 26, 2011
10:14 AM

B E F O R E:
HON. ROBERT D. DRAIN
U.S. BANKRUPTCY JUDGE

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HEARING RE: Proposed Sixty-Sixth Omnibus Hearing Agenda filed
by Ron E. Meisler on Behalf of DPH Holdings Corp., et al.

HEARING RE: Proposed Forty-fourth Claims Hearing Agenda filed
by Ron E. Meisler on Behalf of DPH Holdings Corp., et al.

Transcribed by: Sara Davis

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BY: TIMOTHY T. BROCK, ESQ.

1 P R O C E E D I N G S

2 MR. CHIAPPETTA: Good morning, Your Honor. Louis
3 Chiappetta of Skadden, Arps, Slate, Meagher & Flom on behalf of
4 DPH Holdings Corp. and its affiliated reorganized debtors.

5 THE COURT: Good morning.

6 MR. CHIAPPETTA: On the line with me --

7 THE COURT: I'm sor -- yeah, I was going to say --
8 you're actually going -- good, I want to take the other
9 parties' appearances. There are people on the phone.

10 MR. CHIAPPETTA: Right. I have Al Hogan and Nick
11 Campanario also of Skadden, Arps. They're going to be
12 addressing the motion filed by the Official Committee of
13 Eligible Salaried Retirees, filed at Docket number 21262. And
14 I believe Dean Gloster is on the line from --

15 MR. GLOSTER: Good morning, Your Honor. Dean Gloster
16 of Farella Braun & Martel representing the Official Committee
17 of Eligible Salaried Retirees.

18 THE COURT: Good morning.

19 MR. CHIAPPETTA: Your Honor, as you can see from the
20 agendas --

21 MR. BROCK: All right, I'll -- let me make my
22 appearance.

23 MR. CHIAPPETTA: I'm sorry.

24 MR. BROCK: Timothy Brock from Satterlee, Stephens,
25 Burke & Burke on behalf of the VEBA committee.

1 THE COURT: Good morning.

2 MR. BROCK: Good morning.

3 MR. CHIAPPETTA: Your Honor, as you could see from the
4 proposed agendas that were filed yesterday, there were no
5 claims matters that are going forward, so with Your Honor's
6 permission, I would like to just go forward with the omnibus
7 matters today.

8 THE COURT: That's fine.

9 MR. CHIAPPETTA: Okay. So there's two matters on
10 today's agenda. The first one is the motion filed by the
11 Official Committee of Eligible Salaried Retirees which, if
12 granted, should resolve the VEBA Committee's motion that is
13 listed as the second matter at Docket number 20462.

14 THE COURT: Okay.

15 MR. CHIAPPETTA: So with that, I'd like to turn over
16 to Dean Gloster.

17 THE COURT: Okay. And just, before you do that --
18 when you say it should resolve it, I had already resolved that
19 motion. I mean, the parties have resolved it. It's been
20 pending because of the motion that was filed recently and
21 that's the first item on the calendar.

22 MR. CHIAPPETTA: That's correct.

23 MR. GLOSTER: It's --

24 THE COURT: Okay.

25 MR. GLOSTER: -- exactly, Your Honor.

1 THE COURT: All right, fine. Okay. So you could go
2 ahead.

3 MR. GLOSTER: So, Your Honor, the issue is simply one
4 of trying to preserve what we've accomplished in the bankruptcy
5 which was (skip in audio) fungible for the health coverage tax
6 credit. And the difficulty is that in Congress, the
7 legislation keeps sunseting. And it's sort of tied to
8 reauthorization of -- right now, approval of the Columbia Trade
9 Bill. And there is some risk that the retirees at -- on
10 February 13th, 2012 may lose their eligibility for the health
11 coverage tax credit through this benefit.

12 THE COURT: Right. And you had -- and the VEBA
13 Committee had raised the potential of this issue late last
14 year --

15 MR. GLOSTER: Correct.

16 THE COURT: -- and I gather that there was legislation
17 that was enacted in December of 2010 that extended the credit,
18 although it lowered it to, I guess, fifteen percent through
19 February of 2012, at least.

20 MR. GLOSTER: Correct, Your Honor.

21 THE COURT: All right.

22 MR. GLOSTER: What happened was that was extended for
23 a year and the other provisions of the American Recovery and
24 Reinvestment Act, which included, you know, bumping the subsidy
25 from sixty-five to eighty percent and improving the benefit for

1 eligible family members, those all sunsetted as of last
2 February. And the thought was that the new Congress would have
3 time to take it up. And currently, you know, the sort of
4 legislative situation is those reauthorizations are expected to
5 be attached to the approval of Columbia Trade Agreement this
6 summer. But our experience has been that legislation and the
7 process in Washington is unpredictable and there's been some
8 risk that the retirees would simply lose the subsidy.

9 THE COURT: Right.

10 MR. GLOSTER: The IRS has frankly been enormously
11 cooperative and took the position at the end of last year that
12 even if the legislation were not reauthorized, they would
13 simply allow retirees to sort of check a box on a form and they
14 could continue to receive the health coverage tax credit on the
15 current program. But there's nothing, sort of, written in
16 stone in a statute that says that's the position that the IRS
17 is going to take next year.

18 THE COURT: Okay.

19 MR. GLOSTER: And historically, before the American
20 Recovery and Reinvestment Act, these kind of benefits were set
21 up through VEBAs in bankruptcies by 1114 committees in the
22 context of -- they were done in lieu of COBRA continuation
23 coverage as people lost their retiree benefits. And people
24 would go to the IRS and get a private letter ruling saying just
25 as the COBRA continuation coverage benefit would have been

1 eligible for the health coverage tax coverage, a benefit set up
2 through a VEBA by an 1114 committee which is in lieu of COBRA
3 continuation coverage should be eligible for the HCTC. And
4 the --

5 THE COURT: Okay.

6 MR. GLOSTER: -- IRS has, in fact, provided private
7 letter rulings and a number of these have been set up in the
8 past under that understanding. We, fortunately, had an easier
9 statute to work with because of the American Recovery and
10 Reinvestment Act, but we're in the position that there's going
11 to be substantial uncertainty about what's going to happen to
12 this program after February of 2012 if we don't get some
13 assistance from this Court that would make it easier for the
14 VEBA to go get a private letter ruling if that were necessary.

15 THE COURT: Okay. I have one -- I mean, I've read the
16 motion and the debtors' response to it. My first question is,
17 are you amenable to including in the proposed order on this the
18 language that the debtors propose on -- in paragraph 4 of their
19 response?

20 MR. GLOSTER: Absolutely, Your Honor.

21 THE COURT: Okay.

22 MR. GLOSTER: We're totally in agreement with
23 reorganized debtors that that language would be completely
24 appropriate.

25 THE COURT: Okay. And then, my other question is -- I

1 mean, you're quite candid in your papers saying that while
2 effectively the settlement that was approved in early April
3 2009 took the place of, among other things, COBRA. Or the
4 right to argue for COBRA. You did always -- although not
5 expressly, implicitly reserve the right to argue that that was
6 something extra. So I guess the -- having that in the record
7 and understanding that issue -- although let me say first as an
8 aside, I think that the law of the case is that at least as of
9 July of 2009, there was no -- I ruled that there was no ongoing
10 right for COBRA.

11 MR. GLOSTER: That's correct, Your Honor.

12 THE COURT: Right.

13 MR. GLOSTER: And, you know, that was not contested by
14 the 1114 committee --

15 THE COURT: Right.

16 MR. GLOSTER: -- because we made the tactical --

17 THE COURT: Right.

18 MR. GLOSTER: -- choice not to go fight that fight --

19 THE COURT: But in any event --

20 MR. GLOSTER: -- at those --

21 THE COURT: -- my issue is this, and I don't think
22 it's an issue but I just want to air it for the record. The
23 phrase "in lieu of" is often misused and it is so often misused
24 that I think at this point it may not necessary be a clear
25 phrase, even as defined in the dictionary.

1 I have no problem with concluding that -- this
2 settlement as it -- effectively, you know, as you explain in
3 your whole list of items in your -- in paragraph 19 of your
4 motion, the settlement effectively deprived the retirees of the
5 right to get COBRA. And as a matter of practicalities, there
6 wasn't any real right anyway.

7 And I have no problem with saying that that was the
8 case. Notwithstanding your reservation, which you may have
9 articulated to the debtors at some point before the money
10 actually got paid and before the July hearing. I think where I
11 have a problem is to -- is if I say that the settlement
12 literally deprived you of that right, because it was a
13 settlement and it didn't -- you know, it speaks for itself. So
14 I have no problem if the interpretation of "in lieu of" means
15 effectively was in replacement for COBRA among other things.
16 And I think that's all you're asking for here.

17 MR. GLOSTER: That is all we're asking for, Your
18 Honor.

19 THE COURT: All right. So, with that on the record,
20 I'll grant the motion.

21 MR. GLOSTER: Thank you, Your Honor. We will work
22 with the debtor over an agreed form of order and submit it to
23 the Court.

24 THE COURT: Okay. Very well. Thank you.

25 MR. GLOSTER: And then --

1 THE COURT: And then you need to submit the order on
2 the other motion --

3 MR. GLOSTER: Correct. Which --

4 THE COURT: -- which now is -- the terms of that order
5 are agreed, right?

6 MR. GLOSTER: I believe so. I had -- counsel and I
7 for the VEBA committee have exchanged forms of order and I
8 think the only issue would be, we would just want the order
9 entered by this Court to become final and then the order can be
10 entered disbanding the 1114 committee.

11 THE COURT: Right. The last order that will be
12 entered will be the one disbanding the 1114 committee.

13 MR. GLOSTER: Correct, Your Honor.

14 THE COURT: Okay. All right. When you e-mail the
15 orders, just remind me of that.

16 MR. GLOSTER: Thank you very much.

17 THE COURT: Put them in that order when you e-mail
18 them.

19 MR. CHIAPPETTA: That's fine, Your Honor.

20 THE COURT: Okay.

21 MR. CHIAPPETTA: Thank you very much.

22 THE COURT: Thank you. And thank you for resolving
23 this the way you have.

24 (Whereupon these proceedings were concluded at 10:24 AM)

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I N D E X

RULINGS

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Eligible Salaried Retirees granted		

C E R T I F I C A T I O N

I, Sara Davis, certify that the foregoing transcript is a
true and accurate record of the proceedings.

Sara Davis

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Date: April 27, 2011